

## TIESĪBZINĀTNE

**Anton Sorochenko**

### **INTERNATIONAL EXPERIENCE OF PUBLIC-PRIVATE PARTNERSHIP FOR PROJECTS' IMPLEMENTATION IN THE SPHERE OF SPORT**

This article is devoted to the research of international experience of public-private partnership (PPP) within sport projects realization, as well as the development of ways how to solve the corresponding problems. The concept of “infrastructure development contract” is substantiated. The international experience of PPP for implementing projects in the field of sports (Singapore, India, Denmark, Poland, South Africa) has been analyzed. It has been proved that Denmark had negative experience while Farum's Sport Arena had been constructed. Mostly it caused by the fact that the structure of the contractual management was too complicated for the control of the mayor of the city, and also by the fact that PPP at that time were a relatively new phenomenon for central government bodies. In addition, there was no effective regulation of PPP, especially at the level of municipalities. The main reason for the failed experience of PPP in Farum, experts called the violation of regulations issued by the European Union in terms of regulation of tenders and implementation of contracts. The legal status of World Sports Alliance (WSA) has been investigated. The author insists that attraction of such sport organizations to PPP for projects' implementation in the sphere of sport will allow partners to make risks' and responsibilities' allocation in the most economically effective way. The author concludes that definition of “infrastructure development contract” should be implemented into Ukraine's legislation. Herewith “infrastructure development contract” is a long-term (from 5 to 50 years) cooperation between the state of Ukraine, the Autonomous Republic of Crimea, united territorial communities represented by the relevant state bodies and local self-government bodies (state partners) and legal entities, except state and communal enterprises, or individuals – entrepreneurs (private partners) carried out on the basis of the contract or on the basis of the reversal of a special economic organization of a corporate type (economic association). This cooperation implies the construction, modernization, maintenance of infrastructure facilities at the expense of funds and the industrial/scientific potential of the private partner during the term of the contract/economic organization, while the ownership of the assets and the authority to monitor the proper fulfillment of obligations (“term-quality”) transferred to the public partner. The contractor's sources of income under the life cycle contract are compensation payments from the conceder for the construction and operation of a sports facility as an object of state ownership.

**Key words:** public-private partnership, sport, infrastructure development contract, life cycle contract, Ukraine.

#### **Publiski privātās partnerības starptautiskā pieredze sporta jomas projektu īstenošanā**

Rakstā ir pētīta publiski privātās partnerības (turpmāk PPP) starptautiskā pieredze sporta jomas projektu īstenošanā, kā arī analizētas ar to saistīto problēmu risināšanas iespējas. Autors ir pamatojis “infrastruktūras attīstības kontrakta” koncepciju, kā arī izanalizējis PPP starptautisko pieredzi sporta jomas projektu īstenošanā (Singapūra, Indija, Dānija, Polija, DĀR). Autors

pierāda, ka Dānijai bija negatīva pieredze sporta arēnas *Farum* celtniecībā tāpēc, ka kontraktu vadības struktūra no centrālo valsts organizāciju puses bija pārāk sarežģīta. Turklāt PPP tolaik vispār bija jauna parādība, nebija izveidots efektīvs PPP normatīvais regulējums, īpaši pašvaldību līmenī. Starptautiskās sporta alianses (angļu valodā: *World Sports Alliance*, *WSA*) tiesiskā statusa analīzes rezultātā autors secina, ka šādu sporta organizāciju iesaistīšana publiski privātajā partnerībā, realizējot projektus sporta jomā, ļaus partneriem maksimāli efektīvi sadalīt riskus un pienākumus. Autors uzskata, ka jēdziens “infrastruktūras attīstības kontrakts” ir jāiekļauj Ukrainas likumdošanā. Infrastruktūras attīstības kontrakts paredz ilgtermiņa (no 5 līdz 50 gadiem) sadarbību starp Ukrainas valsti, Krimas Autonomo republiku, apvienotajām teritoriālajām kopienām atbilstošo valsts un pašvaldības organizāciju personā (publiskie partneri) un juridiskajām personām, izņemot valsts un komunālos uzņēmumus, vai fiziskām personām – uzņēmējiem (privātie partneri), kas tiek veikta uz līguma pamata vai izveidojot speciālu saimniecisku kooperatīva tipa organizāciju (saimnieciskā kopiena). Minētā sadarbība paredz infrastruktūras objektu celtniecību, modernizāciju, ekspluatācijas apkalpošanu, izmantojot privātā partnera līdzekļus un rūpniecisko/zinātnisko potenciālu līguma/saimnieciskās organizācijas darbības laikā, taču aktīvu īpašuma tiesības un noteikto saistību izpildes kontroles (“termiņšķīduma kvalitāte”) pilnvaras tiek nodotas publiskajam partnerim. Darbuņēmēja ienākumu avoti saskaņā ar dzīves cikla līgumu ir kondendenta (piešķirēja) kompensācijas maksājumi par sporta objekta kā valsts īpašuma celtniecību un ekspluatāciju.

**Atslēgas vārdi:** publiski privātā partnerība, sports, infrastruktūras attīstības kontrakts, dzīves cikla līgums, Ukraina.

#### **Международный опыт публично-частного партнёрства при реализации проектов в сфере спорта**

Данная статья посвящена исследованию международного опыта публично-частного партнёрства (ПЧП) при реализации проектов в сфере спорта, а также разработке способов решения соответствующих проблем. Обоснована концепция «контракта по развитию инфраструктуры». Проанализирован международный опыт ПЧП при реализации проектов в области спорта (Сингапур, Индия, Дания, Польша, ЮАР). Доказано, что Дания имела негативный опыт при сооружении спортивной арены *Farum*. Это было связано с тем, что структура управления контрактами была слишком сложной для контроля со стороны администрации города, а также с тем, что ПЧП в то время было относительно новым явлением для центральных государственных органов. Кроме того, не было эффективного нормативного регулирования ПЧП, особенно на уровне муниципалитетов. Проанализирован правовой статус Всемирного спортивного альянса (по-английски: *World Sports Alliance*, *WSA*). Автор настаивает на том, что привлечение подобных спортивных организаций к ПЧП при реализации проектов в сфере спорта позволит партнёрам максимально эффективно распределять риски и обязанности. Автор приходит к выводу, что определение «контракта по развитию инфраструктуры» должно быть включено в законодательство Украины. Контракт по развитию инфраструктуры предполагает долгосрочное (от 5 до 50 лет) сотрудничество между государством Украина, Автономной Республикой Крым, объединёнными территориальными общинами в лице соответствующих государственных органов и органов местного самоуправления (публичные партнёры) и юридическими лицами, кроме государственных и коммунальных предприятий, или физическими лицами – предпринимателями (частные партнёры), осуществляемое на основании договора или на основании создания специальной хозяйственной организации корпоративного типа (хозяйственного общества). Указанное сотрудничество подразумевает строительство, модернизацию, эксплуатационное обслуживание объектов инфраструктуры за счёт средств и промышленного/научного потенциала частного партнёра в течение срока действия договора/хозяй-

ственной организации, при этом право собственности на активы и полномочия по контролю за надлежащим выполнением обязательств («срок-качество») передаются публичному партнёру. Источниками дохода подрядчика по договору жизненного цикла являются компенсационные выплаты от концедента за строительство и эксплуатацию спортивного объекта как объекта государственной собственности.

**Ключевые слова:** публично-частное партнёрство, спорт, контракт по развитию инфраструктуры, договор жизненного цикла, Украина.

In the international practice of public-private partnership (PPP), the international abbreviation) in projects' implementation, sport is that area of public relations in which this introduction is the most dynamic and actively developed (Long 2014). In addition, exactly in this area the system of legal regulation of the PPP is the most closely intertwined, as well as other complexes of public relations' normative regulation (Ponkin 2012).

The purpose of this article is to study the world experience of PPP for projects' implementation in the sphere of sport, to highlight and analyze specific advantages and disadvantages of such implementation, as well as develop ways to improve the legislation of Ukraine in the relevant sphere.

PPP is a relatively profitable option as the warp for financial support of sports infrastructure, primarily because most of the sports facilities in the world are currently operated on a commercial basis (Sazonov 2012).

Since the 2010s, one can increasingly hear about the advisability of using a life cycle contract, which involves the assignment of obligations to the contractor in order to maintain the facility in good condition throughout its estimated life cycle and directly contributes to improving the quality of such facilities' construction. According to E. Glumov, the key difference between the life cycle contract and the concession lies in the various sources of financing the costs of the concessionaire. In the first case, compensation is made at the expense of funds received from users of sport service facilities (persons and business entities), in the second – at the expense of regional or municipal budgets. Sources of income for the contractor of the life cycle contract are compensation payments from the grantor for the construction and operation of a sports facility as a state property. The contractor of the life cycle contract is interested in construction of the facility and performing its high-quality servicing under an agreement with the state customer, which transfers the service fee for the facility directly or through an authorized manager of budget funds. The model of the life cycle contract motivates the contractor for quality construction and service of the facility (service payments directly depend on the compliance of the facility with the functional characteristics agreed upon in the contract), regardless of the demand for the services of a sports facility (Glumov 2010).

The application of a life cycle contract is extremely important because in this case the most economically profitable, fair and effective risk sharing occurs between partners (it is known that there is a risk of economic demand for the PPP project (lack of demand for the infrastructure object in case of successful and timely project implementation or vice versa, the presence of unexpectedly high demand) is traditionally

carried by a private partner. Obviously, the life cycle contract can significantly ease the “burden” of such risk for the private partner(s).

The Singapore Sports Hub is the result of a PPP design, construction, financing and management contract (DBFO model) for 25 years.

The development of sports infrastructure is a powerful incentive for updating and modernizing other infrastructure in the state. So, Sh. Kennedy from Indiana University and M. Rosentraub from Cleveland State University note that 15 years before 2000, the US government and state governments invested more than 10 billion USD in sports facilities used by professional sports teams to get the total tangible and intangible benefits. However, most often after fulfilling financial obligations in a very substantial amount, local communities of residents represented by municipal authorities received new requirements from private partners to increase funding. If these growing needs met, sports teams most often moved to other cities. As a result, taxpayers left with debt obligations and the lack of promised sports and infrastructure facilities (Kennedy, Rosentraub 2000).

According to the draft of the India’s National Sports Policy since 2007, commitments for the development of sports have relied on the states and the federal Government of India. Although a holistic approach to a system aimed to popularize sports has not fully developed yet, it assumed that the use of public-private partnerships is a condition for the successful existence and further development of India’s sports. In 2010, according to the schemes of public-private partnership, the Stadium named after Jawaharlal Nehru Sports Complex, Indira Gandhi, National Stadium Dhyana Chanda, Pool complex named after Shyama Prasad Mukherjee, rifle complex Singh renovated and modernized.

The author considers it necessary to give an example of the unsuccessful implementation of public-private partnerships in Denmark (2002) at the local level in the city of Farum, since this case clearly illustrated the lack of legal regulation of this institution’s usage. Local governments in Farum since the 1990s have been very active in attracting private partners to participate in the provision of infrastructure through public-private partnerships. In 2000, the local self-government bodies of the city of Farum entered into an agreement on public-private partnership for the maintenance of kindergartens and nursing homes, as well as completed a sale transaction with which water supply systems for schools were returned for rent, and also took part in an agreement on the implementation of public-private partnerships under the BOOT scheme (build – ownership – operation – transfer) for the construction of the Farum Arena (sports arena) and the Farum Park (football stadium), as well as the Center of the Sea and the Sea swimming “Farum Marina” (Greve, Ejersbo 2004).

In early 2002, a huge scandal broke out due to lack of funds, which entailed serious consequences for local governments. One of the reasons for the emergence of such situation was very high level of sophistication of the contract management’s structure for monitoring function of the city administration, as well as the fact that public-private partnerships at that time were a relatively new phenomenon for central government bodies. In addition, there was still no effective legal regulation of public-private partnerships, especially at the level of municipalities. As the main reason for the unsuccessful experience in implementing public-private partnerships in Farum,

experts cite a violation of regulations issued by the European Union regarding the regulation of tenders and the implementation of contracts (Sazonov 2012).

A new direction of public-private partnership in the field of sports is developing and gaining recognition namely partnerships in ensuring the safety of sports events, the implementation of anti-terrorism protection measures during such events (Sokolova 2002).

World Sports Alliance (WSA) is currently implementing PPP sports projects. The World Sports Alliance was established as a result of a global public-private initiative in partnership with the UN Department of Economic and Social Affairs (UNDESA), whose global mission is to promote the development of sports as a means of diplomacy, socio-economic development, human development mobility, education and training for approximately 530 million citizens, who are in nearly 33 member states. The World Sports Alliance Intergovernmental Organization is carrying out its global mission to promote and fully support the United Nations Global Sustainable Development Goals (UNGSDG).

WSA is operated on the principles of self-financing and self-sufficiency. Membership in the specified organization does not require contributions of Member States; investments/funds are attracted through operations and social initiative based on the commercial business model according to which the WSA promotes and/or implements industrial and/or commercial projects based mainly on the use of the Program Public Private Partnership (“WSA Projects”), in which the WSA, as an investment organization, is a public component of a public-private partnership. It directs its share of profits in favor of the achievement of the World Alliance of its purpose (the implementation of the project concerned), and support mission on the territory of a Member State, as well as at the global level (Sagar 2010).

One of the direct advantages for a Member State joining the WSA is the creation, in collaboration with the WSA and under the leadership of the WSA National Representative in that country, of its National Center for Competence in Physical Education for Sports and Recreation, including negotiations on the implementation of the Training and Training Plan for the main framework, adapted to the needs and requirements of the Member State on the basis of the four programs of the World Center of Competence, as well as the above allows the development and implementation of school youth curricula and educational programs and a network of sports centers for youth communities in the territory of a Member State (McLiesh 2008).

During the first two years of the voluntary entry into the WSA and the active participation of a Member State in the alliance, the latter in cooperation with modern environmental technology development partners and operators around the world, promotes the cleanliness of industrial activities in order to stimulate employment, improve economic conditions, increase performance and quality of life, implements various WSA projects consisting of industrial infrastructure and commercial projects agreed upon the Member State through a bilateral joint venture agreement between the WSA and the Member State. In this case, we are talking about the implementation of WSA projects for the “profit”, where the revenues received by public and private partners from each WSA project, developed on the basis of the PPP or otherwise, will provide funding to host the WSA socio-economic initiative in the territory of a Member State.

The development of the WSA socio-economic initiative includes the design, construction, implementation and support of sports, physical education, medical fitness, cultural, social, social and medical infrastructures, including, but not limited to, the network of sports centers for youth communities in the member states (World Sports Alliance 2018).

Private investments, managerial, intellectual and other resources of private entities under contracts of public-private partnership in the field of sports, as a rule, can be attracted to such projects:

- 1) design, construction, modernization, ownership, maintenance of the object in good condition, management, etc. (under concession agreements, less often – life cycle contracts) with the following objects:
  - individual sports facilities of capital construction (sports arenas, stadiums, football, hockey fields, pools, tracks, etc.), multifunctional sports and entertainment complexes, other sports facilities;
  - national sports infrastructure as a whole or its individual segments;
  - providing sports events with transport, utilities and other infrastructure;
  - enterprises of the sports industry;
- 2) the provision of public services in the field of sports;
- 3) holding major sporting events;
- 4) ensuring the safety of sporting events, the implementation of anti-terrorism protection measures during such events;
- 5) the creation of a “grassroots”, yard sports infrastructure for children and adolescents;
- 6) the implementation of educational projects of public-private partnerships (in the field of construction and maintenance of sports schools, sports training centers), the creation of sports facilities of educational organizations.

The objects of public-private partnership in the field of sports are mainly large specialized or multifunctional sports complexes (Brown et al. 2010).

In Poland, 43.0% of the total number of facilities that built in 2009–2011 under the PPP schemes were pools, in second place in terms of number were sports and entertainment complexes and sports ports (miniport for sports vessels) (Gurgul 2011).

In the Republic of South Africa (South Africa), in preparation for the 2010 FIFA World Cup, a significant problem for 2006 was the lack of compliance of sports and transport infrastructures with the necessary requirements. The solution to this complex of problems was entrusted to private partners under public-private partnership contracts. In particular, it was in this form that the project for the construction of the 80-km The Gautrain high-speed railway was implemented, connecting Johannesburg with Pretoria and with the international airport. This project, worth more than 1 billion USD, implemented in the form of a concession for four years of construction and 15 years of private management of a consortium of international and local private partners, led by the Bombela Consortium. In South Africa, based on PPP contracts, a number of sports arenas have been built and/or modernized for the 2010 FIFA World Cup (World Sports Alliance 2018).

Thus, the reform of the national economy of Ukraine using the PPP mechanisms includes the following steps:

- 1) determination of the executive authority (local government), authorized to coordinate PPP relations in the field of sports – the Ministry of Youth and Sports of Ukraine (Kabinet Ministriv 2014a), as well as the state authority (local government), authorized to coordinate and regulate PPP relations depending on the chosen direction – concessions, production sharing agreements, public procurement and the like. A special place in this case is occupied by the determination of the Cabinet of Ministers of Ukraine in relations between the PPP and participation in the management of the PPP projects (Kabinet Ministriv 2014b);
- 2) determination of the specifics of the implementation and management of the PPP projects related to the use of both the institutional / corporate form and the contractual form of the PPP. In particular, based on a narrow understanding of the concept of public administration, they require a more thorough legislative settlement, in particular, provisions on:
  - shareholder agreement (when using the corporate form);
  - the structure of the relevant corporation – in the case, in particular, of the implementation of the above experience of South Africa (special attention should be paid to the 13<sup>th</sup> principle of international and national corporate governance standards called “Technology”, according to which the board of directors should ensure that the technology and systems that are used corporation, were adequate for the normal conduct of business and ensure the competitiveness of the corporation;
  - the legal status of both direct participants in the PPP project and investors who have acquired shares in the relevant company without burdening the obligations of the PPP;
- 3) the development and implementation of the most cost-effective mechanism for the distribution of risks between partners (the wording “fair risk sharing” enshrined in Article 5 of the Law of Ukraine “On Public-Private Partnership” (Verkhovna Rada 2010), in our opinion, does not accurately reproduce the content of the corresponding concept). The greatest economic efficiency of risk sharing between partners can be achieved when the project risks are assigned to the most competent parties in this regard, as a result of which the overall project cost is reduced and the risks themselves are minimized. For example, the risks associated with planning best attributed to the public sector, while private actors can best manage operational and financial risks. At the same time, public and private partners carry various types of risks, which depends on the project and the subject of the PPP contract:
  - a) public partner:
    - political risks (changing the political situation in the country);
    - the risk of bankruptcy of a private partner(s) and the inability to replace a party to an obligation;
    - risks associated with the proper operation of the land allocated for the construction of the infrastructure facility;
  - b) private partner:
    - risks associated with the current management of the PPP project as an integral part of public administration in this area;

- the risk of economic demand for the PPP project (lack of demand for the infrastructure facility in case of successful and timely implementation of the project or vice versa, the presence of unexpectedly high demand);
  - political risks (equally with a public partner);
  - currency risks associated with fluctuations in the exchange rate of the country in which the PPP project will be implemented;
- 4) determination of the characteristic advantages and disadvantages of the implementation of PPP projects in the field of sports.

Significant advantages in this case can be determined that the PPP, properly organized and managed, can be a cost-effective means of attracting additional financing from the private sector in the construction, modernization and operation of sports infrastructure. The costs of maintaining the operation and development of sports infrastructure can be unacceptably high for the budget, and often public authorities, especially when it comes to municipalities, do not have sufficient financial resources to meet society's demand in this regard, given that the budget is mainly taken for a relatively short period of time is one year, and many infrastructure projects are implemented in a longer period. At the same time, the use of a joint stock company within the PPP (corporate PPP form) allows, on the one hand, to unite partners within the framework of an economic organization created with their participation, and on the other hand, to attract additional investments through the issue of additional shares with their subsequent sale to investors, while maintaining state and private partners control over the infrastructure (Sina, Bruna 2013).

The specific weaknesses of the corporate / institutional form of the PPP are as follows:

- excessive confidence in the economic potential and the results of this kind of cooperation;
  - lack of preliminary convincing, comprehensive and transparent confirmation of the effectiveness of PPP projects in terms of optimizing government spending;
  - lack of opportunities for adequate assessment and control by the state partner of the fulfillment by the private partner of the relevant contractual obligations;
- 5) implement the concept of an “infrastructure development contract” in legislation (namely, supplement article five of the Law of Ukraine “On Public-Private Partnership” (Verkhovna Rada 2010) with part five of the following definition) and outline the main requirements for concluding such an agreement, including: a) the scope of relations that may be regulated by this contract, taking into account the use of PPP models; b) the form of the contract; c) forms of liability that will apply to violators of the terms of the relevant contract; d) conditions for the validity of the transaction – life cycle agreement; e) grounds for termination and the like (Vinnik 2010).

At the same time, “infrastructure development contract” is a long-term (from 5 to 50 years) cooperation between the state of Ukraine, the Autonomous Republic of Crimea, the united territorial communities represented by the relevant state bodies and local authorities (state partners) and legal entities other than state and utilities, or by individuals-entrepreneurs (private partners), which is carried out on the basis of



an agreement or on the basis of an institution – namely corporate-type economic organization (economic association), which provides for the construction, modernization, operational maintenance and repair of the infrastructure facility at the expense of the funds and industrial potential of the private partner throughout the duration of the contract, while retaining ownership of the facility and authority to monitor the proper fulfillment of obligations by the public partner.

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